

INDIVIDUALS with DISABILITIES EDUCATION ACT DISPUTE RESOLUTION PROCEDURES

When there is an unresolved disagreement over identification, evaluation or educational placement of a child with a disability or the provision of free appropriate public education, the options for dispute resolution are mediation, formal written complaint, and due process hearing. These options are available to the parent/surrogate parent of the minor child or the adult student who has reached the age of majority (18), unless legally deemed incompetent or unable to make educational decisions.

REQUESTING A DUE PROCESS HEARING

Time Limits:

- Request must occur within 1 year of when the parent or school knew or should have known of the action that is basis of complaint
- Exceptions: (20 USC 1415(f)(3)(D))
 - The parent was prevented from requesting a hearing due to the school's withholding information that was required to be provided to the parent or
 - The school misrepresented that it had resolved complaint

Due Process Hearing Request Notice Requirements (20 USC 1415(b)(7)(A))

- Must be sent to opposing party and NC DPI
- Must include name and residence of child and name of school child attends
- If homeless child, must include available contact information for the child and the name of school
- Description of problem, including facts relating to problem
 - Issues at the hearing are limited to those listed in the notice (20 USC 1415(f)(3)(B))
- Proposed resolution of problem

Sufficiency of Notice

- Can be challenged in writing and must be submitted to the hearing officer and the opposing party (20 USC 1415(c)(2)(A))
- Must be done within 15 days of receipt of complaint (20 USC 1415(c)(2)(c)).
- Hearing officer has 5 days from receipt of written challenge to decide if notice is sufficient ((20 USC 1415(d)(2)(D))
- An amended complaint may be submitted if
 - opposing party consents and is given the opportunity to resolve the complaint or
 - hearing officer grants permission to amend and amendment is received at least 5 days prior to the due process hearing
 - 20 USC 1415(c)(2)(E)
 - Remaining timelines for due process hearing start at time amended notice is filed (20 USC 1415(c)(2)(E)(ii))

School Response to Complaint (20 USC 1415(c)(2)(B))

- School has 10 days from receipt of complaint to send parent a response
 - why it made the decision,
 - description of other options considered by IEP TEAM
 - reason for rejection of those options,
 - description of evaluations, records, reports that support the school's decision and
 - factors that are relevant to school's decision

PROCEDURES BEFORE DUE PROCESS HEARING

Dispute Resolution Session

- Purpose: Opportunity for parents to discuss their complaint and supporting facts, and school has an opportunity to resolve the complaint (20 USC 1415(f)(1)(B)(i)(IV))
- Must occur before the due process hearing unless the school and parent agree in writing to waive the meeting or to use mediation instead (20 USC 1415(f)(1)(B)(i))
- Meeting must occur within 15 days of the school's receipt of the due process notice and must include the parent(s), IEP TEAM members with knowledge regarding the facts contained in the complaint and a school representative with decision-making authority (20 USC 1415(f)(1)(B))
- School may not have an attorney present if the parents do not have an attorney present (20 USC 1415(f)(1)(B)(i)(III))
- If an agreement is reached, it is legally binding and enforceable in state or federal court, but it may be voided within 3 business days of the agreement's execution (20 USC 1415(f)(1)(B)(iii) and (iv))
- May be waived if BOTH parties agree.

If the matter is not resolved within 30 days of the school's receipt of the parent's complaint, the due process hearing may occur and the timelines kick in

20 USC 1415(f)(1)(B)(ii)

Mediation (20 USC 1415(e)(2))

- Can be requested on its own
- Will be offered to the parties when a complaint or due process hearing is filed
- Will only occur if both parties agree to participate (voluntary)
- It cannot be used to deny or delay a parent's rights to a due process hearing
- The mediator must be "qualified and impartial"
- The cost is born by the State ((20 USC 1415(e)(2)(D))

- Mediation must be timely scheduled and held in a mutually convenient location (20 USC 1415(e)(2)(E))
- Any agreement reached is reduced to writing and is legally binding and enforceable in state or federal court (20 USC 1415(e)(2)(F))
- All discussions that occur in mediation are confidential (20 USC 1415(e)(2)(F)(ii))

Pre-Hearing Conference:

- Clarification of the issues
- Exhibits provided by requesting party
- Length of time needed for hearing

Disclosure of Evaluations: (20 USC 1415(f)(2))

- 5 business days before hearing, each party must disclose to the other party all the evaluations that have been completed and the recommendations offered by those evaluations that will be used at hearing or else those evaluations may be prohibited from the hearing

THE DUE PROCESS HEARING

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities. However, NC law prohibits a non-attorney from representing a party at a due process hearing.
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

NC 1504-1.13(a)

- Parents involved in hearings must be given the right to have the child who is the subject of the hearing present; Open the hearing to the public (parents electing to open the hearing to the public should provide written notice to the Administrative Law Judge and the other party); and have the record of the hearing and the findings of fact and decisions provided at no cost to parents

NC 1504-1.13(c)

“Stay Put” (20 USC 1415(j))

- Student remains in “then current educational placement” during hearing process unless parents and school agree to other placement

Hearing Decisions and Appeals

Basis for Decision by Hearing Officer

- Decision must be based on substantive grounds (20 USC 1415(f)(3)(E)(i))
- Procedural violations must have affected child's right to FAPE or significantly impeded parent's opportunity to participate in decision-making process re: FAPE or caused a deprivation of educational benefits (20 USC 1415(f)(3)(E)(ii))

Appeals:

- Decision may be appealed by either party in state court or federal district court (regardless of amount in controversy) within 30 days of decision (which is the State time limitation) (20 USC 1415(i)(2))
- Preponderance of the evidence standard (20 USC 1415(i)(2)(c)(iii))
- Additional evidence may be heard at the request of a party (20 USC 1415(i)(2)(c)(ii))

Attorney's Fees

- Reasonable attorneys' fees for due process hearing may be awarded to prevailing parent (20 USC 1415(i)(3)(B)(i)(I))
- May not be awarded for IEP TEAM meeting unless IEP TEAM is result of hearing or court action (20 USC 1415(i)(3)(D)(ii)
 - Dispute resolution sessions are not a hearing or court action
- May not be awarded for services performed after a written offer of settlement to parents if
 - offer is made 10 days before due process hearing,
 - offer is not accepted within 10 days and
 - hearing officer/court decision rules parent's relief is not more favorable to parents than offer
 - 20 USC 1415(i)(3)(D)(i)
- School can seek reasonable attorneys' fees
 - *against parent's attorney* if cause of action is frivolous, unreasonable or without foundation (20 USC 1415(i)(3)(B)(i)(II) or
 - *against parent or parent's attorney* if case presented for improper purpose (harassment, unnecessary delay, increase cost of litigation) 20 USC 1415(i)(3)(B)(i)(III)